

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

Petitioner,

v.

KATRINA A. HILL

Respondent

Case No.: I-02-72560

I-02-72635

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, as amended (D.C. Official Code §§ 2-1801.01 *et seq.*), and Title 21, Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 72560) served on November 19, 2002, the Government charged Respondent KaTrina A. Hill with violating 21 DCMR 708.10 by using plastic bags alone for household waste storage.¹ The Notice of Infraction alleged that Respondent violated 21 DCMR 708.10 on November 18, 2002 at 542 24th Street, N.E. (the “Property”), and sought a fine of \$50.

On December 17, 2002, Respondent filed an answer and plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2), along with a request for a reduction or

¹ 21 DCMR 708.10 provides:

Plastic bags intended for use as container liners are prohibited for use alone for storing solid waste refuse, except that plastic bags of at least nine (9) mil. thickness with a capacity of no more than thirty-two (32) gallons and securely tied may be used as containers for yard rubbish, provided that bags used for this purpose are marked as yard rubbish and set out for collection on the day(s) designated for yard rubbish collection.

suspension of the authorized fine.² By order dated January 2, 2003, this administrative court permitted the Government an opportunity to respond to Respondent's plea and request. The Government has elected not to respond.

Based on the entire record in this matter, I now make the following findings of fact and conclusions of law:

II. Findings of Fact

1. By her answer and plea of Admit with Explanation, Respondent has admitted violating 21 DCMR 708.10 on November 18, 2002 at the Property.

2. On November 18, 2002, Respondent used "plastic bags intended for use as container liners . . . alone for storing solid waste refuse," at the Property. 21 DCMR 708.10.

3. Prior to the violation, Respondent had requested a waste receptacle, presumably from the District of Columbia government, for the Property, to no avail. Respondent usually keeps her trash in her home until the weekly pick-up at the Property. Due to an overabundance of trash as the result of a gathering at her home, however, Respondent's guest placed the trash outside two days prior to the scheduled weekly pick-up.

4. Respondent has accepted responsibility for her unlawful conduct, and there is no evidence in the record of a history of noncompliance on her part.

² Due to administrative error, a default notice was issued to Respondent after receipt of her answer, and the Government issued a second Notice of Infraction (No. 72635) based thereon. Accordingly, the second Notice of Infraction shall be dismissed as moot.

III. Conclusions of Law

1. Respondent violated 21 DCMR 708.10 on November 18, 2002. A fine of \$50 is authorized for a first violation of this regulation. 16 DCMR §§ 3201.1(d)(1) and 3216.4(e). *See* 48 D.C. Reg. 6656 (July 27, 2001).

2. Respondent has requested a reduction or suspension of the authorized fine. A reduction of the fine, but not a suspension, is warranted under these facts. Respondent's argument that the District's alleged failure to provide her with a trash receptacle shields her from liability is not persuasive, as § 708.10 imposes strict liability on those who own or control a property. *See DOH v. Fleming*, OAH No. I-02-72423 at 2 (Final Order, November 18, 2002) (imposing strict liability for violation of § 708.10); *DOH v. Belay*, OAH No. I-02-72237 at 4 (Final Order, October 3, 2002) (same); *see also DOH v. Jones*, OAH No. I-02-72249 at 4 (Final Order, September 3, 2002) (noting respondent's explanation that trash can had been stolen was unpersuasive where he provided "no explanation as to why . . . he could not have simply replaced, at his own expense, the stolen trash can that had been provided to him in the first instance by the District government as a public benefit"). In light of Respondent's acceptance of responsibility and lack of evidence in the record of noncompliance, however, I will reduce the fine to \$30. *See* D.C. Official Code §§ 2-1801.02(a)(2) and 2-1801.03(a)(6); U.S.S.G. § 3E1.1; 18 U.S.C. § 3553.

IV. Order

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is, this _____ day of _____, 2003:

ORDERED, that Notice of Infraction (No. 72635) is hereby **DISMISSED AS MOOT**; and it is further

ORDERED, that Respondent shall pay a total of **THIRTY DOLLARS (\$30)** in accordance with the attached instructions within 20 calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant

to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ 02/11/03

Mark D. Poindexter
Administrative Judge